Office Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1962

No. 891

ANGUS M. MacNEIL,
PETITIONER,

v.

STATE REALTY COMPANY OF BOSTON, INC.,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE LAND COURT OF THE COMMONWEALTH OF MASSACHUSETTS

PETITIONER'S REPLY BRIEF

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Blanchard Printing Company, Boston, Mass — Law Printers

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PETITIONER'S REPLY BRIEF

Angus M. MacNeil respectfully replies to the Brief of the Respondent in Opposition.

Opinions Below

The petitioner respectfully calls the attention of the court again to the fact that no opinion was rendered in the Supreme Judicial Court of the Commonwealth of Massachusetts. The complete record of that court has been submitted as part of the record in this case.

As to the argument contained in the respondent's brief as to the law of Massachusetts quotation from the leading case in Massachusetts Reports is as follows:

> "*Piper* v. *Childs*, 290 Mass. 560, 'We assume that this is a case in which the petitioner for intervention, though denied admission as a party, (*Goldman* v. *Noxon Chemical Products Co.*, 274 Mass. 526; 528) may take exceptions or appeal from the denial of leav to intervene because the denial is destructive of the right claimed by the petitioner. *Check* v. *Kaplan*, 280 Mass. 170, 176, 179. *United States* v. *California Co-operative Canneries*, 279 U.S. 553, 556; *Palmer* v. *Bankers Trust Co.* 12 Fed. Rep. (2nd) 747; *Rheinburger* v. *Security Life Insurance Co. of America*, 72 Fed. Rep. (2nd) 147.'

See also *Credits Commutation Co.* v. *U. S.*, 177 U.S. 311; *Ex Parte Leaf Tobacco Board of Trade*, 222 U.S. 578, 581; *In re Engelhard*, 231 U.S. 646; *City of New York* v. *Consolidated Gas Co.*, 253 U.S. 219; *New York* v. *New York Telephone Co.*, 261 U.S. 312, "Except where he who seeks to intervene has a direct and immediate interest in a res which is subject of the suit."

Jurisdiction

In view of the law above cited and quoted and especially that in *Piper* v. *Childs*, 290 Mass. 560, it was the duty of the Supreme Judicial Court of Massachusetts to hear and determine the question of law raised. See Petition for Writ of Certiorari, page 12; App. A, G.L. C. 211, sec. 3 and G.L. C. 185, sec. 15, especially the question of the deprivation of the petitioner of his land and buildings without notice or opportunity to be heard.

The cases cited by the respondent on page 2 of its brief, all relate to appeals that were not properly taken according to the laws of the states and defective in procedural aspects. Here no such situation prevails. The Land Court refused to allow the petitioner to appear and protect his property. The Supreme Judicial Court, also refused to permit the petitioner to appear and be heard in the protection of his property. Full compliance with all procedural requirements was had by the petitioner, yet he was subjected to a judgment depriving him of his property without due process of law and with all rights to be heard in its protection denied him. This gives ample jurisdiction to the United States Supreme Court. There is adequate jurisdiction in this court to hear and determine the rights of the petitioner herein.

Questions Presented

The question presented is that set forth in the original petition for certiorari to this court. The petitioner respectfully calls to the attention of the Court the decision of the Supreme Judicial Court of Massachusetts in *Killam* v. *Marsh*, 316 Mass. 646; which reads in part as follows, "One acquiring title to registered land with actual notice of an unregistered interest therein not noted on his certificate, would not take his certificate in good faith within G.L. (Ter. Ed.) c. 185, sec. 46, so far as such interest was concerned".

It might be here noted that the respondent was well aware of the interest of your petitioner in the property subject to the litigation and admitted its said knowledge by the allegations in par. 4 of the petition shown in R. 33. Although this admission by the respondent is of extreme importance to the case, the respondent suggests to this court that such paper having been filed prior to July 19,

1961 should not be considered and that this admission is immaterial and irrelevant. The suggestion appears on page 4 of the respondent's brief.

Statutes Involved

The issue in this case is primarily whether or not the petitioner can be deprived of his property without due process of law. G. L. (Ter. Ed.) c. 185, sec. 70, required notice to be given to all parties at interest and an opportunity be given them to appear and be heard. The respondent herein knew that the petitioner herein was a party at interest but gave him no notice of the proceedings nor any opportunity to be heard. R. 33, par. 4. It appears that there is a very definite denial of due process of law under the Fourteenth Amendment to the Constitution of the United States. The petitioner denies that the requirements of sections 26A; 27; 41 and 42 of G.L., C. 185 apply only to petitions for original registration of title to land but maintains that they also apply to petitions of the nature filed by the respondent herein especially in the light of *Killam* v. *Marsh*, 316 Mass. 646.

Statement of the Case

The petitioner respectfully suggests to the court that all references made by the respondent in its brief, to the contents of the certificate of title be disregarded, for the reason that nowhere in the record of this case does it appear that the certificate of title was ever submitted to the Land Court or to the Supreme Judicial Court for their consideration, in the determination of this case. No copy of the said certificate was filed with the clerk or recorder of the Land Court or with the clerk of the Supreme Judicial Court. See docket records as filed with this petition

for certiorari in this court. Nor was any copy of any certificate of title filed as an exhibit in any trial of merits, as the docket further shows that there was no trial of merits. Furthermore, if any certificate of title had been filed it would have shown the satisfaction of the mortgage debt in 1954.

There of course could be no legal entry and possession by the mortgagee for breach of the conditions of a mortgage that had been satisfied in full by payment into court by court order. See petition filed herein for certiorari at page 20. There could have been no continuous possession if possession had been taken from the respondents by order of court. This is the subject of allegations contained in the 'Answer of Angus M. MacNeil and Counterclaim' copy of which is included in the record filed herein.

Just as the lower court denied to Angus M. MacNeil all right and opportunity to be heard in disproving the claim of continued adverse possession under breach of mortgage conditions by the respondent, it also denied to him the right to be heard in denial of any legal entry of the so-called 'Final Decree after Rescript' which apparently dismissed the Bill for Redemption for the reason that MacNeil Bros. Company the plaintiff therein, had conveyed the subject property to Boston Development Corporation, the predecessor in ownership to your petitioner. Nor did the Land Court nor the Supreme Judicial Court ever give to the petitioner the right or opportunity to be heard in proving that the so-called 'Final Decree after Rescript' was voided by Justice Robert A. Sullivan in the Superior Court by his granting of the right to intervene and be heard to the Boston Development Corporation. This right although granted was never respected by the Superior Court and never has the said corporation or those claiming under it been given the opportunity to be heard by the court in the protection of its rights.

As to the allegation of the respondent on page 8 of its brief par. 4, concerning hearing by the Supreme Judicial Court of A. M. MacNeil in opposition to the motion of the respondent therein for dismissal of appeal and exceptions, the petitioner herein prefers to take the words of Chief Justice Wilkins, then sitting with the full court, when he stated that the Court would not hear Angus M. MacNeil on the said motion but would permit him to file a brief if he cared to do so. This even though G. L., C. 211, sec. 5 and G. L., C. 185, sec. 15 required a hearing by the full court. See Petition for Writ of Certiorari, page 12, App. A for copies of said statutes.

The respondent on pages 8-9-10 of its brief is attempting to influence and prejudice this court in matters of no concern with the present case. There has not been any suggestion in any of the cases cited by the respondent of any moral turpitude on the part of the petitioner herein. The petitioner has, to the best of his ability, at all times, complied strictly and honestly with his oaths of office; and has been grievously harmed by the punishments inflicted upon him and his clients because he refused to betray his clients and his oath of office.

The present denial of due process of law in the present case, is but a further punishment to the petitioner for continuously seeking fair and impartial justice from a court that is very apparently prejudiced. Much could be written in this brief about the orders of the courts in Massachusetts that would show the utter disregard of the rights of your petitioner and his clients in violation of the Constitution and laws of the United States.

A few examples would be, the denial of hearings and application of the laws in the protection of the property of the petitioner and his clients over the period of years; the order to pay certain sums of money into court by orders of the court in satisfaction of the claims of the re-

spondent, followed by the payment by the petitioner conformably to the order and then continued absolute refusals of the court to enforce the satisfaction of said claims and its orders followed by refusal on many occasions to return the said funds; while a suit was in litigation, the Superior Court ordered valuable exhibits of the petitioner delivered to the respondent herein with no protection for their preservation; the entry of orders permitting intervention in the Superior Court followed by complete and absolute refusals by the court to hear the intervenors after intervention; the refusal by the Superior Court and the Supreme Judicial Court to permit appeals to the Supreme Court of the United States to be filed or prosecuted although offered for filing properly under the laws of the United States and Rules of the Supreme Court of the United States; the removal of papers from the files of the Superior Court so that copies for use in this and other courts could not be produced or obtained.

This list of denials of due process of law and of denials of equal protection under the laws, to the petitioner and his clients could extend to many more items but the short period of time available within which to file this reply to the respondent's brief does not allow sufficient time to the petitioner to check the records of the Massachusetts courts so that the statements are exactly accurate and certified copies, affidavits and other proofs of fact prepared, in order to inform the court beyond any possibility of error or doubt the extent to which the courts of Massachusetts are disregarding the rights of the people by denial of due process of law and of equal protection under the laws.

The petitioner is ready able and willing to substantiate his allegations made herein with incontrovertible proof if given the opportunity and time within which to obtain and file it.

Suffice it to say that the chief judge of a court of another jurisdiction on hearing of what was going on in the Courts in Massachusetts invited the petitioner to become a member of the Bar of his jurisdiction, which invitation was accepted.

That while the petitioner submitted his petition for a writ of certiorari to this court strictly upon the record and the applicable laws, the respondent saw fit to depart from the record and law and to introduce an attempt to prejudice the court. The petitioner suggests to the court that he is completely willing to have this court examine into the doings of the courts in Massachusetts, especially those matters pertinent to the subject matter of this petition for a writ of certiorari.

Respectfully submitted,

ANGUS M. MACNEIL
pro se for the Petitioner